

Introduced by Senator Price

February 19, 2010

An act to amend Sections 2924 and 2929.3 of the Civil Code, relating to foreclosures.

LEGISLATIVE COUNSEL'S DIGEST

SB 1427, as introduced, Price. Foreclosures: property maintenance.

Existing law requires that, upon a breach of the obligation of a mortgage or transfer of an interest in property, the trustee, mortgagee, or beneficiary record a notice of default in the office of the county recorder where the mortgaged or trust property is situated and mail the notice of default to the mortgagor or trustor. Existing law requires the notice of default to include specified information, including the identification of the trustors and a description of the property.

This bill would require a notice of default to include a statement that identifies the name, address, telephone, and e-mail address of any person or entity that is designated to be responsible for the maintenance of the property for which the deed of trust is recorded.

Existing law, until January 1, 2013, requires a legal owner to maintain vacant residential property purchased at a foreclosure sale, or acquired by that owner through foreclosure under a mortgage or deed of trust. Existing law authorizes a governmental entity to impose civil fines and penalties for failure to maintain that property of up to \$1,000 per day for a violation. Existing law provides that these statutory provisions do not preempt any local ordinances and prohibits a governmental entity from imposing fines on a legal owner under both these provisions and a local ordinance.

This bill would provide that these statutory provisions preempt any local ordinance and would further provide that any fines or penalties

imposed for failure to maintain a property are the obligation of the legal owner and that these fines would be treated as a lien against the property in a foreclosure sale.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 2924 of the Civil Code, as added by
2 Section 8 of Chapter 4 of the Second Extraordinary Session of the
3 Statutes of 2009, is amended to read:

4 2924. (a) Every transfer of an interest in property, other than
5 in trust, made only as a security for the performance of another
6 act, is to be deemed a mortgage, except when in the case of
7 personal property it is accompanied by actual change of possession,
8 in which case it is to be deemed a pledge. Where, by a mortgage
9 created after July 27, 1917, of any estate in real property, other
10 than an estate at will or for years, less than two, or in any transfer
11 in trust made after July 27, 1917, of a like estate to secure the
12 performance of an obligation, a power of sale is conferred upon
13 the mortgagee, trustee, or any other person, to be exercised after
14 a breach of the obligation for which that mortgage or transfer is a
15 security, the power shall not be exercised except where the
16 mortgage or transfer is made pursuant to an order, judgment, or
17 decree of a court of record, or to secure the payment of bonds or
18 other evidences of indebtedness authorized or permitted to be
19 issued by the Commissioner of Corporations, or is made by a public
20 utility subject to the provisions of the Public Utilities Act, until
21 all of the following apply:

22 (1) The trustee, mortgagee, or beneficiary, or any of their
23 authorized agents shall first file for record, in the office of the
24 recorder of each county wherein the mortgaged or trust property
25 or some part or parcel thereof is situated, a notice of default. That
26 notice of default shall include all of the following:

27 (A) A statement identifying the mortgage or deed of trust by
28 stating the name or names of the trustor or trustors and giving the
29 book and page, or instrument number, if applicable, where the
30 mortgage or deed of trust is recorded or a description of the
31 mortgaged or trust property.

1 (B) A statement that a breach of the obligation for which the
2 mortgage or transfer in trust is security has occurred.

3 (C) A statement setting forth the nature of each breach actually
4 known to the beneficiary and of his or her election to sell or cause
5 to be sold the property to satisfy that obligation and any other
6 obligation secured by the deed of trust or mortgage that is in
7 default.

8 (D) If the default is curable pursuant to Section 2924c, the
9 statement specified in paragraph (1) of subdivision (b) of Section
10 2924c.

11 *(E) A statement that identifies the name, address, telephone*
12 *number, and electronic mail address, if available, of the person*
13 *or entity, if any, that the beneficiary or mortgagee has designated*
14 *to be primarily responsible for the maintenance of the property.*

15 (2) Not less than three months shall elapse from the filing of
16 the notice of default.

17 (3) After the lapse of the three months described in paragraph
18 (2), the mortgagee, trustee, or other person authorized to take the
19 sale shall give notice of sale, stating the time and place thereof, in
20 the manner and for a time not less than that set forth in Section
21 2924f.

22 (b) In performing acts required by this article, the trustee shall
23 incur no liability for any good faith error resulting from reliance
24 on information provided in good faith by the beneficiary regarding
25 the nature and the amount of the default under the secured
26 obligation, deed of trust, or mortgage. In performing the acts
27 required by this article, a trustee shall not be subject to Title 1.6c
28 (commencing with Section 1788) of Part 4.

29 (c) A recital in the deed executed pursuant to the power of sale
30 of compliance with all requirements of law regarding the mailing
31 of copies of notices or the publication of a copy of the notice of
32 default or the personal delivery of the copy of the notice of default
33 or the posting of copies of the notice of sale or the publication of
34 a copy thereof shall constitute prima facie evidence of compliance
35 with these requirements and conclusive evidence thereof in favor
36 of bona fide purchasers and encumbrancers for value and without
37 notice.

38 (d) All of the following shall constitute privileged
39 communications pursuant to Section 47:

1 (1) The mailing, publication, and delivery of notices as required
2 by this section.

3 (2) Performance of the procedures set forth in this article.

4 (3) Performance of the functions and procedures set forth in
5 this article if those functions and procedures are necessary to carry
6 out the duties described in Sections 729.040, 729.050, and 729.080
7 of the Code of Civil Procedure.

8 (e) There is a rebuttable presumption that the beneficiary
9 actually knew of all unpaid loan payments on the obligation owed
10 to the beneficiary and secured by the deed of trust or mortgage
11 subject to the notice of default. However, the failure to include an
12 actually known default shall not invalidate the notice of sale and
13 the beneficiary shall not be precluded from asserting a claim to
14 this omitted default or defaults in a separate notice of default.

15 (f) This section shall become operative on January 1, 2011.

16 SEC. 2. Section 2924 of the Civil Code, as added by Section
17 8 of Chapter 5 of the Second Extraordinary Session of the Statutes
18 of 2009, is amended to read:

19 2924. (a) Every transfer of an interest in property, other than
20 in trust, made only as a security for the performance of another
21 act, is to be deemed a mortgage, except when in the case of
22 personal property it is accompanied by actual change of possession,
23 in which case it is to be deemed a pledge. Where, by a mortgage
24 created after July 27, 1917, of any estate in real property, other
25 than an estate at will or for years, less than two, or in any transfer
26 in trust made after July 27, 1917, of a like estate to secure the
27 performance of an obligation, a power of sale is conferred upon
28 the mortgagee, trustee, or any other person, to be exercised after
29 a breach of the obligation for which that mortgage or transfer is a
30 security, the power shall not be exercised except where the
31 mortgage or transfer is made pursuant to an order, judgment, or
32 decree of a court of record, or to secure the payment of bonds or
33 other evidences of indebtedness authorized or permitted to be
34 issued by the Commissioner of Corporations, or is made by a public
35 utility subject to the provisions of the Public Utilities Act, until
36 all of the following apply:

37 (1) The trustee, mortgagee, or beneficiary, or any of their
38 authorized agents shall first file for record, in the office of the
39 recorder of each county wherein the mortgaged or trust property

1 or some part or parcel thereof is situated, a notice of default. That
2 notice of default shall include all of the following:

3 (A) A statement identifying the mortgage or deed of trust by
4 stating the name or names of the trustor or trustors and giving the
5 book and page, or instrument number, if applicable, where the
6 mortgage or deed of trust is recorded or a description of the
7 mortgaged or trust property.

8 (B) A statement that a breach of the obligation for which the
9 mortgage or transfer in trust is security has occurred.

10 (C) A statement setting forth the nature of each breach actually
11 known to the beneficiary and of his or her election to sell or cause
12 to be sold the property to satisfy that obligation and any other
13 obligation secured by the deed of trust or mortgage that is in
14 default.

15 (D) If the default is curable pursuant to Section 2924c, the
16 statement specified in paragraph (1) of subdivision (b) of Section
17 2924c.

18 *(E) A statement that identifies the name, address, telephone*
19 *number, and electronic mail address, if available, of the person*
20 *or entity, if any, that the beneficiary or mortgagee has designated*
21 *to be primarily responsible for the maintenance of the property.*

22 (2) Not less than three months shall elapse from the filing of
23 the notice of default.

24 (3) After the lapse of the three months described in paragraph
25 (2), the mortgagee, trustee, or other person authorized to take the
26 sale shall give notice of sale, stating the time and place thereof, in
27 the manner and for a time not less than that set forth in Section
28 2924f.

29 (b) In performing acts required by this article, the trustee shall
30 incur no liability for any good faith error resulting from reliance
31 on information provided in good faith by the beneficiary regarding
32 the nature and the amount of the default under the secured
33 obligation, deed of trust, or mortgage. In performing the acts
34 required by this article, a trustee shall not be subject to Title 1.6c
35 (commencing with Section 1788) of Part 4.

36 (c) A recital in the deed executed pursuant to the power of sale
37 of compliance with all requirements of law regarding the mailing
38 of copies of notices or the publication of a copy of the notice of
39 default or the personal delivery of the copy of the notice of default
40 or the posting of copies of the notice of sale or the publication of

1 a copy thereof shall constitute prima facie evidence of compliance
2 with these requirements and conclusive evidence thereof in favor
3 of bona fide purchasers and encumbrancers for value and without
4 notice.

5 (d) All of the following shall constitute privileged
6 communications pursuant to Section 47:

7 (1) The mailing, publication, and delivery of notices as required
8 by this section.

9 (2) Performance of the procedures set forth in this article.

10 (3) Performance of the functions and procedures set forth in
11 this article if those functions and procedures are necessary to carry
12 out the duties described in Sections 729.040, 729.050, and 729.080
13 of the Code of Civil Procedure.

14 (e) There is a rebuttable presumption that the beneficiary
15 actually knew of all unpaid loan payments on the obligation owed
16 to the beneficiary and secured by the deed of trust or mortgage
17 subject to the notice of default. However, the failure to include an
18 actually known default shall not invalidate the notice of sale and
19 the beneficiary shall not be precluded from asserting a claim to
20 this omitted default or defaults in a separate notice of default.

21 (f) This section shall become operative on January 1, 2011.

22 SEC. 3. Section 2929.3 of the Civil Code is amended to read:

23 2929.3. (a) (1) A legal owner shall maintain vacant residential
24 property purchased by that owner at a foreclosure sale, or acquired
25 by that owner through foreclosure under a mortgage or deed of
26 trust. A governmental entity may impose a civil fine of up to one
27 thousand dollars (\$1,000) per day for a violation. If the
28 governmental entity chooses to impose a fine pursuant to this
29 section, it shall give notice of the alleged violation, including a
30 description of the conditions that gave rise to the allegation, and
31 notice of the entity's intent to assess a civil fine if action to correct
32 the violation is not commenced within a period of not less than 14
33 days and completed within a period of not less than 30 days. The
34 notice shall be mailed to the address provided in the deed or other
35 instrument as specified in subdivision (a) of Section 27321.5 of
36 the Government Code, or, if none, to the return address provided
37 on the deed or other instrument.

38 (2) The governmental entity shall provide a period of not less
39 than 30 days for the legal owner to remedy the violation prior to
40 imposing a civil fine and shall allow for a hearing and opportunity

1 to contest any fine imposed. In determining the amount of the fine,
2 the governmental entity shall take into consideration any timely
3 and good faith efforts by the legal owner to remedy the violation.
4 The maximum civil fine authorized by this section is one thousand
5 dollars (\$1,000) for each day that the owner fails to maintain the
6 property, commencing on the day following the expiration of the
7 period to remedy the violation established by the governmental
8 entity.

9 (3) Subject to the provisions of this section, a governmental
10 entity may establish different compliance periods for different
11 conditions on the same property in the notice of alleged violation
12 mailed to the legal owner.

13 (b) For purposes of this section, “failure to maintain” means
14 failure to care for the exterior of the property, including, but not
15 limited to, permitting excessive foliage growth that diminishes the
16 value of surrounding properties, failing to take action to prevent
17 trespassers or squatters from remaining on the property, or failing
18 to take action to prevent mosquito larvae from growing in standing
19 water or other conditions that create a public nuisance.

20 (c) Notwithstanding subdivisions (a) and (b), a governmental
21 entity may provide less than 30 days’ notice to remedy a condition
22 before imposing a civil fine if the entity determines that a specific
23 condition of the property threatens public health or safety and
24 provided that notice of that determination and time for compliance
25 is given.

26 (d) Fines and penalties collected pursuant to this section shall
27 be directed to local nuisance abatement programs.

28 (e) A governmental entity may not impose fines on a legal owner
29 under both this section and a local ordinance.

30 *(f) Fines or penalties imposed by a local ordinance for failure*
31 *to maintain a property that is subject to a notice of default are the*
32 *obligation of the legal owner and shall be treated as a lien against*
33 *the property in a foreclosure sale.*

34 ~~(f)~~

35 (g) These provisions shall ~~not~~ preempt any local ordinance.

36 ~~(g)~~

37 (h) This section shall only apply to residential real property.

38 ~~(h)~~

1 *(i)* The rights and remedies provided in this section are
2 cumulative and in addition to any other rights and remedies
3 provided by law.

4 ~~*(i)*~~

5 *(j)* This section shall remain in effect only until January 1, 2013,
6 and as of that date is repealed, unless a later enacted statute, that
7 is enacted before January 1, 2013, deletes or extends that date.